

**STATE OF INDIANA
Board of Tax Review**

BASIC AMERICAN.)	On Appeal from the Elkhart County
)	Board of Review
Petitioner,)	
)	Petition for Review of Assessment, Form 131
v.)	Petition No. 20-025-98-1-4-00011
)	Parcel No. 25-06-07-235-001
ELKHART COUNTY BOARD OF)	
REVIEW And CONCORD TOWNSHIP)	
ASSESSOR)	
)	
Respondents.)	

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issues

1. Whether the grade and design factor is excessive.
2. Whether functional and economic obsolescence is warranted.
3. Whether the condition rating is correct.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law herein shall also be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-15-3, Kropp & Associates filed a Form 131 petition on behalf of Basic American (the Petitioner) requesting a review by the State Board. The Form 131 petition was filed on December 9, 1998. The Elkhart County Board of Review's Final Determination was issued on November 30, 1998.

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on March 2, 2000 before Hearing Officer Ellen Yuhan. Testimony and exhibits were received into evidence. Paul Kropp represented the Petitioner. Cathy Searcy represented Elkhart County. Bonnie Spicher represented Concord Township.

4. At the hearing, the Form 131 petition with attachments was made part of the record and labeled Board Exhibit A. In addition, the following exhibits were submitted into evidence:
 - Petitioner's Exhibit 1 - property record card for a comparable nursing home in Elkhart County;
 - Petitioner's Exhibit 2 - copy of a page from 50 IAC 2.2-11-4.1, graded photographs;
 - Petitioner's Exhibits 3 to 8 - photographs of the subject property;
 - Petitioner's Exhibits 9 to 14 - photographs of the comparable nursing home;
 - Petitioner's Exhibit 15 - Licensed Beds vs. Actual Census Percentage, Chelsea Healthcare Center;
 - Petitioner's Exhibit 16 - justification for obsolescence;
 - Petitioner's Exhibit 17 - 1998 State Tax Board determination for a nursing home in Lafayette, IN;
 - Petitioner's Exhibit 18 - 1996 occupancy rates for the subject property;
 - Petitioner's Exhibit 19 - 1997 occupancy rates for the subject property;
 - Petitioner's Exhibit 20 - 1996 occupancy rate for Elkhart County;

Petitioner's Exhibit 21 - 1997 occupancy rate for Elkhart County;
Petitioner's Exhibit 22 - income and expense statement for the period ending
12/31/1996; and
Petitioner's Exhibits 23 to 48 - photographs pertaining to the condition issue for a
1998 appeal.

Respondent's Exhibit 1 - property record card for 1995; and
Respondent's Exhibit 2 - property record card for 1998.

5. The property is a nursing home located at 1400 W. Franklin, Elkhart, IN 46516.
6. The Hearing Officer did not view the property.
7. The assessed value for 1998 is :
Land: \$6,770 Improvements, \$295,570 Total, \$302,340.
8. Mr. Kropp testified that he was a Level II Certified Indiana Assessor-Appraiser. He is a member of the International Association of Assessing Officers (IAAO). Mr. Kropp testified that he prepared the analysis. Kropp & Associates is contracted on a one-year contingency basis, but the owner has declared bankruptcy. Mr. Kropp is the owner of Kropp & Associates.

Issue 1 – Grade

9. Mr. Kropp testified to the following:
 - (a) The comparable nursing home in Osolo Township has a grade of C; the subject is graded C+1.
 - (b) The Petitioner requests a C grade.
 - (c) Regulation 17 has pictures of nursing homes (Petitioner's Exhibit 2); there is no C+1 grade illustrated in the manual.
 - (d) The photographs depicting grade were taken today.
 - (e) Petitioner's Exhibits 3-8 show the exterior of the subject property; Petitioner's

Exhibits 9-14 show the comparable property in Osolo Township.

- (f) Chelsea Manor, the subject property, is closed and has been since after the March 1, 1998 assessment date.
10. Ms. Searcy testified that the Board of Review determined the assessment to be correct.
 11. Ms. Spicher testified that she could not agree with a C grade. The grade should remain at C+1.

Issue 2 - Obsolescence

12. Mr. Kropp testified to the following:
 - (a) One of the EagleCare facilities is in Lafayette, IN. In 1998 the assessment of that facility was appealed.
 - (b) He quantified the obsolescence for Chelsea Manor using the same methodology the State Board used for a Tippecanoe County nursing home.
 - (c) The average nursing home occupancy for Elkhart County in 1996 was 77.04%; in 1997, it was 84.95%. This information is in a report published every year by the Indiana Department of Health.
 - (d) The subject's occupancy rate for 1996 was 31.85%; for 1997, it was 33.69%. This is an average of 32.77% for the two years.
 - (e) This demonstrates a two-year trend of occupancy, which is 48.4% below the industry average for Elkhart County; therefore, Chelsea Manor is entitled to 50% economic obsolescence.
 - (f) In the State Board determination, under item 12, the same calculation is made.
 - (g) The income and expense statement has been submitted to show the loss the facility incurred for 1995 and 1996.
 - (h) The facility was so unsuccessful it closed.
13. Ms. Searcy testified that the Board of Review voted "No change", agreeing with

the township assessor.

14. Ms. Spicher stated that the township objects to the obsolescence request. The nursing home was licensed for 157 beds in 1993, but they only had 133 beds. The occupancy was 72% in 1993.

Issue 3 - Condition

15. Mr. Kropp testified to the following:
 - (a) The current condition rating is average; the facility is in the fair to poor range.
 - (b) The concrete floor has been broken to repair pipes and it remains broken.
 - (c) EagleCare employees took the photographs in December 1996 when they took over the facility from Chelsea Manor.
 - (d) The series of photographs clearly show the condition and poor workmanship.
 - (e) The facility was closed at the time of the Board of Review hearing and the pictures were not available for that hearing.
18. Ms. Searcy testified that the Board of Review voted “No change”, agreeing with the township assessor.
19. Ms. Spicher testified that the building was constructed in 1969. Condition is relative to age and it was determined the condition was average in 1995. There are some condition problems shown in the photographs. Ms. Spicher asked if all of the rooms were in that condition. Mr. Kropp testified that pictures were not taken of all rooms, but mainly the problem areas. Ms. Spicher stated that the Board of Review and the Township determined the condition was average in 1998 and they still contend it is average.
20. The Hearing Officer asked Ms. Searcy if it was the policy of the Board of Review to order an on-site inspection. Ms. Searcy stated they probably did not for 1995, but they might have in 1998. Ms. Spicher stated that they had in some situations, but she did not know if they did for this appeal.

Conclusions of Law

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the County Board or issues that are raised as a result of the County Board's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the County Board. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the County Board disagree with the County Board's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the County Board and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County Board pursuant to Ind. Code § 6-1.1-15-3.

A. Indiana's Property Tax System

3. Indiana's real estate property tax system is a mass assessment system. Like all

other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.

4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State’s decision.

B. Burden

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the County Board, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the County Board, the State is entitled to presume that its actions are correct. See 50 IAC 17-6-3. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. One manner for the taxpayer to meet its burden in the State’s administrative proceedings is to: (1) identify properties that are similarly situated to the contested property, and (2) establish disparate treatment between the contested property and other similarly situated properties. *Zakutansky v. State Board of Tax Commissioners*, 691 N.E. 2d 1365, 1370 (Ind. Tax 1998). In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer's evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not "triggered" if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State's final determination merely because the taxpayer demonstrates flaws in it).

C. Review of Assessments After *Town of St. John V*

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed value assigned to the property does not equal the property's market value will fail.
16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax

system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.

17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

D. Witness Compensation

18. The State's position is that it has the right to make general inquiry regarding, and to consider, the method by which a witness is compensated. Information about the witness's fee can be relevant and necessary in order to evaluate the potential partiality of the witness. A contingent fee arrangement may be considered to inherently affect the objectivity of a witness. The State believes it appropriate to consider the potential of such an arrangement to improperly motivate the witness and adversely affect the reliability of the testimony. It is for these reasons that the State will consider the method of witness compensation in the process of determining the credibility and weight to be given to testimony of a witness whose fee is contingent on the outcome of the issues that he or she is testifying about. This position is supported by the discussion in the case of *Wirth v. State Board of Tax Commissioners*, 613 N.E. 2d 874 (Ind. Tax 1993).
19. At the hearing, Mr. Kropp testified that Kropp & Associates is paid on a contingent fee basis. Mr. Kropp is the owner of Kropp & Associates.

E. Issue 1 - Grade

20. "Grade" means the classification of an improvement based on certain construction specifications and quality of materials and workmanship. 50 IAC 2.2-1-30.
21. Grade is used in the cost approach to account for the deviations from the norm or

"C" grade. The quality and design of a building are the most significant variables in establishing grade.

22. Subjectivity is used in grading property. For assessing officials and taxpayers alike, however, the Manual provides indicators for establishing grade. The text of the Manual (see 50 IAC 2.2-10-3) and graded photographs (50 IAC 2.2-11-4.1) provide guides for establishing grade.
23. The Petitioner submitted photographs of the subject property and of a comparable nursing home in the same county. The Petitioner also submitted the graded photographs from 50 IAC 2.2-11-4.1 and the property record for the comparable.
24. The Township presented no evidence on this issue, but testified the grade should remain C+1.
25. The photographs show few differences in the exteriors of the two nursing homes. The photographs from 50 IAC 2.2-11-4.1, while not a determination of the actual grade of the structure shown, are indications of grade.
26. The Petitioner did present probative evidence to establish a given fact, which the local officials failed to rebut.
27. For the above reasons, the State will grant the Petitioner's request to change the grade from C+1 to C. A change is made as a result of this issue.

F. Issue 2 - Obsolescence

1. The concept of depreciation and obsolescence

28. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence.

International Association of Assessing Officers (IAAO) Property Assessment Valuation, 153 & 154 (2nd ed. 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (Ind. Tax 1998) (citing *Am. Inst. Of Real Estate Appraisers, The Appraisal of Real Estate* (10th ed. 1992)).

29. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.
30. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. *IAAO Property Assessment Valuation* at 153. The definition of obsolescence in the Regulation 50 IAC 2.2-10-7 is tied to the one applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
31. Economic obsolescence depreciation is defined as “obsolescence caused by factors extraneous to the property.” 50 IAC 2.2-1-24.
32. Functional obsolescence depreciation is defined as “obsolescence caused by factors inherent in the property itself.” 50 IAC 2.2-1-29.
33. The elements of functional and economic obsolescence can be documented using recognized appraisal techniques. These standardized techniques enable a knowledgeable person to associate cause and effect to value pertaining to a specific property. *Canal Square*, 694 N.E. 2d 801.
34. There are five methods used to measure accrued depreciation, two indirect and three direct. Each has advantages and disadvantages and has a different degree of reliability. Direct methods involve measuring the depreciation of the subject property, whereas indirect methods use sales of comparables properties

and income loss from rental properties to measure depreciation. The methods are categorized as follows: Indirect methods 1) Sales comparison method and 2) capitalization of income method; Direct methods 1) economic age-life method, 2) modified economic age-life method, and 3) the observed condition (breakdown) method. IAAO Property Assessment Valuation, 155-156 (2nd ed. 1996).

2. Burden regarding the obsolescence claim

35. “[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
36. The identification of causes of obsolescence requires more than randomly naming factors. “Rather, the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value.” *Champlin*, 745 N.E. 2d at 936.
37. “Without a loss of value, there can be no economic obsolescence.” *Pedcor v. State Board of Tax Commissioners*, 715 N.E. 2d 432, 438 (Ind. Tax 1999).
38. “In the commercial context, a loss of value usually represents a decrease in the improvement’s income generating ability.” *Loveless Construction v. State Board of Tax Commissioners*, 695 N.E. 2d 1045, 1047 (Ind. Tax 1998). See also *Damon Corp. v. State Board of Tax Commissioners*, 738 N.E. 2d 1108 (Ind. Tax 2000).
39. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).

40. Regarding obsolescence, the petitioner has a two-prong burden of proof: (1) the petitioner has to prove that obsolescence exists, and (2) the petitioner must quantify it. *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1233 (Ind. Tax 1998).

3. The evidence submitted

41. In support of the claim for obsolescence, the Petitioner presented documentation substantiating the vacancy rates for 1995 -1997 and Indiana Department of Health reports for 1996 and 1997 showing what the occupancy rate should be in Elkhart County. The Petitioner also submitted a 1998 State Board determination for a nursing home in Tippecanoe County and a property record card for a nursing home in Osolo Township.

4. Evaluation of the evidence

42. In this case, the Petitioner has requested 50% economic obsolescence based on occupancy rates of 31.85% for 1996 and 33.69% for 1997. The County gave no reason for the denial. The Township representative testified that in 1993 there were only 133 beds although 157 beds were licensed. At this time, there was 72% occupancy.
43. Occupancy rates, even if the subject's rates are lower than a documented local average, are not enough to prove or quantify obsolescence. Many other factors besides obsolescence can be responsible for low occupancy rates.
44. As stated above, obsolescence is a measure of a loss in value to the property. A loss in value cannot be measured solely by an analysis of occupancy rates. There are two recognized appraisal methods of measuring the type of external obsolescence claimed by the Petitioner: (1) capitalizing the income or rent loss attributable to the negative influence; and (2) comparing comparable sales of

similar properties, some exposed to the negative influence and others not.
Property Assessment Valuation, Second Edition (International Association of Assessing Officers) at 173.

45. The Petitioner submitted evidence that the State previously allowed the method of computing obsolescence that it has proposed. As previously stated, however, the Indiana Tax Court has ruled that recognized appraisal methods must be used to compute obsolescence. The Petitioner's proposed method is not an accepted appraisal technique, and the State erred in previously allowing it. Administrative agencies should not be trapped in their mistakes and forced to continue their errors. See *State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E. 2d 678, 681 (Ind. Tax 1988).
46. Since the Petitioner failed to use a recognized appraisal technique to quantify its obsolescence request, it has failed to meet its burden of proof concerning this issue. Therefore, there is no change in the assessment as a result of this issue.

G. Issue 3 - Condition

47. Condition is a judgment of the physical condition of the item relative to its age. "Average" indicates the structure is in average condition relative to its age, or the condition in which it would normally be expected.
"Fair" indicates the structure is in fair condition relative to its age. The degree of deterioration is somewhat worse than would normally be expected.
"Poor" indicates the structure is in poor condition relative to its age. The degree of deterioration is significantly worse than would be normally expected. 50 IAC 2.2-10-5(d)(8).
48. The Petitioner submitted sixteen photographs of the interior and exterior of the subject building that showed deterioration in some areas of the building.

49. The Township Representative testified the property was rated average in 1995 and was still considered average. Neither the Township nor County Representatives knew if an on site inspection had been conducted as a result of the Board of Review hearing.

50. As stated previously, the taxpayer's burden in the State Board's administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. While the Petitioner has submitted photographs of the subject property, comparable properties must also be used to help define the difference between average condition and fair condition. Because the Petitioner failed to submit comparable properties, there is no link established between the Petitioner's evidence and its conclusion.

51. For the reason stated, the Petitioner has failed to meet its burden of proof that the condition rating is incorrect. Therefore, there is no change in the assessment as a result of this issue.

Summary of State Determinations

Issue No. 1 – Grade

52. The grade is changed to a C.

Issue No. 2 – Obsolescence

53. The Petitioner failed to meet his burden of proof. No change is made to the assessment as a result of this issue.

Issue No. 3 – Condition

54. The Petitioner failed to meet his burden of proof. No change is made to the assessment as a result of this issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review